

**State of New Hampshire
Judicial Branch
Judicial Performance Evaluation (JPE) Advisory Committee
October 11, 2013
1:00pm**

Attendees

Associate Supreme Court Justice Carol Ann Conboy, Superior Court Chief Justice Tina Nadeau, Circuit Court Deputy Administrative Judge David King, Sen. Sharon Carson, Rep. Marjorie Smith, Deputy Attorney General Ann Rice, Attorney Daniel Will (NH Bar Association), Attorney Christopher Keating (Judicial Council), Attorney Randy Hawkes (Public Defender), Supreme Court Clerk Eileen Fox and Carole Alfano, Judicial Branch Public Information Officer.

Minutes of the Meeting

On Friday, October 11, 2013, the JPE Advisory Committee met at the Administrative Office of the Courts (AOC). The meeting began at 1:05pm. The minutes of the July 1, 2013, committee meeting were approved.

Justice Conboy introduced Carole Alfano as the new Public Information Officer for the Judicial Branch, replacing Laura Kiernan who retired in September.

Justice Conboy introduced the meeting's special guest speaker Professor Jordan Singer from New England School of Law (NESL). Professor Singer teaches Civil Procedure at NESL and is an expert on Judicial Performance Evaluations.

Prof. Singer began by sharing his observations regarding judicial evaluations and their purpose. One type of evaluation is designed to improve judicial performance, while the other is constructed with the goal of educating voters regarding a judge who is up for retention or election. NH is similar to MA and RI in that judges are appointed in all three of these states. In MA, evaluations are limited to only trial judges and filled out only by attorneys, which is not the case in NH. The record on evaluations in RI is more difficult to discover due to the fact RI lacks transparency regarding its process.

Professor Singer made it clear that there is no confidentiality in surveys meant to educate voters, but that a strong case can be made to keep the results of evaluations private when their single intent is to enhance judicial performance, not to be a part of a voter's consideration on Election Day. Singer stated he believes it does not make sense to publish the evaluation results by specifically named judges.

Singer then discussed a variety of points concerning the science behind evaluation surveys and how to expand NH's evaluation process:

- It is important to properly structure a survey to avoid it from being hijacked by a group or an individual with a grudge against a certain judge.
- A well-structured survey will reveal a judges strengths and weaknesses.
- NH should improve its current evaluation standards and structure so a judge is required to meet an established efficiency level. Ex: If a judge is rated on a scale of 1-5, and "3" is the established efficiency, then he/she should score a standard of "3" in each major category to be acceptable.
- A judge's survey numbers should be measured against his/her peer group.
- Whatever is the agreed upon efficiency, more flexible measurements should also be incorporated including: (1) information concerning a judge's courtroom demeanor and case management, as well as his/her organizational and listening skills; and (2) a broad survey base including jurors, witnesses and litigants. This group should not be asked about how they feel about the outcome of their case, but rather, whether they felt they were given a fair chance to tell their side of the story. Singer reports this type of question has great value and should be posed at the right time. This could mean conducting a poll immediately following the conclusion of a trial if finances permit.
- When constructing a survey, choosing a vehicle (such as Survey Monkey) is important. An advanced program is able to reduce the number of multiple responses from one person.
- JPE committees must also discuss the ideal number of years between which a judge is surveyed. There is merit in newer judges being evaluated more frequently than veterans.
- Bias in surveys is real. Asking "free thinking" or demeanor-oriented questions can help reduce bias, especially against women.
- Increasing the public's awareness that judicial evaluations are a reality in NH, and how they are managed, builds confidence in the judicial process among citizens. It also shows judges are held accountable.
- NH may want to consider including more information concerning judicial evaluations and continuing education efforts in the Judicial Branch's Annual Report.
- NH may also want to consider establishing a court observer program and videotaping judges as an additional way to review their courtroom style and demeanor, etc.

Following Professor Singer's presentation, a brief work session was held.

Sen. Carson discussed her plans to work with Rep. Smith and file legislation amending RSA 490:32 in an attempt to correct consistencies in the statute pertaining to the issue of "confidentiality".

Carole Alfano will follow up with Prof. Andy Smith from the UNH Survey Center to inquire about his availability to speak with the JPE Committee and share his thoughts on NH's current judicial evaluation survey.

The meeting adjourned at 3:00pm.

Submitted by Carole Alfano, Executive Secretary to the Committee